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February 17, 2015

RECEIVED

Dorothy A. Powers, Town Clerk
Town of Westwood
580 High Street
Westwood, MA 02090

FEB 20 2020

RE: Westwood Special Town Meeting of November 17, 2014 - Case # 7455
Warrant Articles # 11, 12, 13, 14, 15 and 16 (Zoning)
Warrant Article # 7, 17 and 18 (General)

Planning Board
Grafton, MA

Dear Ms. Powers:

Articles 7 and 18 – We take no action on Articles 7 and 18 because they are votes to accept the provisions of local option statutes. Such votes do not require review and approval by the Attorney General.

Article 14 – We retain Article 14 (Street Access Special Permit) for further review and will issue our decision by our deadline of March 9, 2015.

Articles 11, 12, 13, 15, 16, and 17 – We approve these Articles from the November 17, 2014 Westwood Special Town Meeting. Our comments on Article 13 are detailed below.

Article 13 – Article 13 amends Section 7.3 of the Town's Zoning Bylaw, "Environmental Impact and Design Review." In part the amendments make the EIDR by-law applicable to the "construction, installation or alteration of a Minor Wireless Communication Facility pursuant Section 9.4 of [the zoning] bylaw."

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 requires that "[A] state or local government *may not deny, and shall approve*, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (emphasis added). The Act defines "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves: 1) collocation of new transmission equipment; 2) removal of transmission equipment; or 3) replacement of transmission equipment. The Act applies "[n]otwithstanding section 704 of the Telecommunications Act of 1996." The Act's requirement that a local government "may not deny, and shall approve, any eligible facilities request" means that a request for modification to an existing facility that does not substantially change the physical dimensions of the tower or base station must be approved. Such qualifying requests also cannot

be subject to a discretionary special permit. The Town must apply the EIDR by-law consistent with these requirements.

Article 13 also amends Section 7.3.3, "Exempt Uses" to clarify the application of the EIDR by-law to protected uses under G.L. c. 40A, Section 3, as follows (emphasis supplied):

In cases where M.G.L. Chapter 40A, Section 3 provides certain exemptions from zoning restrictions for uses protected thereunder, review and approval pursuant to this Section shall be limited consistent with those statutory provisions and on other matters shall be advisory only. For all uses exempt under M.G.L. Chapter 40A, Section 3, the Planning Board shall make determinations of compliance with dimensional and parking requirements of this Bylaw, including requirements related to setbacks, building height, building coverage, impervious surface, parking and circulation, buffers, screening, landscaping, lighting, and stormwater management.

This text must be applied consistent with the protections given to agricultural, religious, educational, child care, and solar energy systems under G.L. c. 40A, § 3.

First, G.L. c. 40A, § 3 requires that, to the extent the use of land or structures constitutes commercial agriculture, the Town cannot require a special permit for, unreasonably regulate, or prohibit such activities: (1) on land zoned for agriculture; (2) on land that is greater than five acres in size; and (3) on land of 2 acres or more if the sale of products from the agricultural use generates \$1,000 per acre or more of gross sales. We urge the Town to consult closely with Town Counsel when applying the new text in the EIDR by-law to agricultural uses to ensure that the Town complies with G.L. c. 40A, § 3.

Second, for religious, educational, and child care uses, G.L. c. 40A, § 3 allows the Town to impose only reasonable regulations in eight areas: the bulk and height of structures, yard size, lot area, setbacks, open space, parking and building coverage requirements. Nothing in G.L. c. 40A, § 3 allows the Town to impose requirements regarding impervious surface, screening, landscaping, lighting, and stormwater management on religious, educational, and child care uses. Because the text in underline and bold above conflicts with the G.L. c. 40A, § 3 protections for religious, educational, and child care uses, the Town cannot apply this text to such uses. We urge the Town to consult closely with Town Counsel when applying the new text in the EIDR by-law to religious, educational, and child care uses to ensure that the Town complies with G.L. c. 40A, § 3.¹

¹ During the course of our review we received correspondence from a Town resident urging us to disapprove the amendment to Section 7.3.3 on the basis that the EIDR is in reality special permit review process, and thus violates G.L. c. 40A, § 3. We appreciate this correspondence and it has aided us in our review. However, we are unable to conclude that the EIDR is in reality a special permit requirement, and cannot disapprove the text under the Attorney General's standard of review of by-laws under G.L. c. 40, § 32.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

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cc: Town Counsel Thomas P. McCusker